



[9110-05-P]

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**49 CFR Part 1572**

**[Docket No. TSA-2004-19605]**

**Provisions for Fees Related to Hazardous Materials Endorsements and  
Transportation Worker Identification Credentials**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Transportation Security Administration (TSA) has a statutory obligation to recover its costs for conducting security threat assessments (STAs) and credentialing for Hazardous Materials Endorsements (HMEs) and Transportation Worker Identification Credentials (TWICs). These fees reimburse TSA for the costs of administering the programs. The proposed rule advises that future revisions to fee schedules will be published in the Federal Register. After public comments, TSA proposes to publish a final rule that removes specific fee amounts from 49 CFR 1572.403 (state collection of HME fee), 1572.405 (TSA collection of HME fee), and 1572.501 (collection of TWIC fee) to enable TSA to have necessary flexibility to lower or increase fees as necessary to meet the statutory obligation to recover its costs.

**DATES:** Submit comments by [Insert date 45 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; fax (202) 493-2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See SUPPLEMENTARY INFORMATION for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Mitchell, Office of Security Policy and Industry Engagement, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6002; telephone (571) 227-2372; e-mail [carolyn.mitchell@dhs.gov](mailto:carolyn.mitchell@dhs.gov).

For legal questions: Traci Klemm, Office of Chief Counsel, TSA-2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6002; telephone (571) 227-3596; facsimile (571) 227-1378; e-mail [traci.klemm@dhs.gov](mailto:traci.klemm@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

## **Comments Invited**

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See ADDRESSES above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under ADDRESSES, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under “FOR FURTHER INFORMATION CONTACT,” in the public docket, except for comments containing confidential information and sensitive security information (SSI)<sup>1</sup>. Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in

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<sup>1</sup> “Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in FOR FURTHER INFORMATION CONTACT section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or

signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at <http://www.regulations.gov>. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366-9826. This docket operations facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue, SE, Washington, DC 20590.

#### **Availability of Rulemaking Document**

You can get an electronic copy using the Internet by--

- (1) Searching the electronic Federal Docket Management System (FDMS) web page at <http://www.regulations.gov>;
- (2) Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published Federal Register edition; or accessing the "Search the Federal Register by Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or
- (3) Visiting TSA's Security Regulations web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the FOR FURTHER INFORMATION CONTACT section. Make sure to identify the docket number of this rulemaking.

### **Abbreviations and Terms Used in This Document**

CDL – Commercial Driver’s License

CHRC – Criminal History Records Check

FBI – Federal Bureau of Investigation

HME – Hazardous Materials Endorsement

IFR – Interim Final Rule

MTSA – Maritime Transportation Security Act

STA – Security Threat Assessment

TWIC – Transportation Worker Identification Credential

### **Background**

Approximately 2 million workers, including Coast Guard-credentialed merchant mariners, port facility employees, longshore workers, truck drivers, and others requiring unescorted access to secure areas of maritime facilities and vessels regulated under the Maritime Transportation Security Act (MTSA)<sup>2</sup> must successfully complete an STA and hold a TWIC in order to enter secure areas without an escort.<sup>3</sup> TSA conducts the STA and issues the credential, and the Coast Guard enforces the use of TWIC at MTSA-regulated facilities.

As part of the process for obtaining a TWIC, applicants must pay a fee made up of three segments: Enrollment Segment, Full Card Production/Security Threat

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<sup>2</sup> See 46 U.S.C. 70105.

<sup>3</sup> See 33 CFR 105.514. See also 72 FR 3492 (Jan. 25, 2007) (TWIC and HME Final Rule).

Assessment Segment, and Federal Bureau of Investigation (FBI) Segment.<sup>4</sup> Most applicants pay the Standard TWIC Fee, which includes all three segments. Applicants who have completed a comparable threat assessment, such as the threat assessment TSA conducts on commercial drivers with a HME, pay a reduced TWIC Fee.<sup>5</sup>

In the TSA Hazardous Materials Endorsement Threat Assessment Program (HME Program), TSA conducts an STA for any driver seeking to obtain, renew, or transfer a hazardous materials endorsement (HME) on a state-issued commercial driver's license (CDL). The program was implemented to meet a statutory requirement that prohibits states from issuing a license to transport hazardous materials (hazmat) in commerce unless a determination has been made that the driver does not pose a security risk. The Act further requires that the risk assessment include checks of criminal history records, legal status, and relevant international databases.<sup>6</sup>

Applicants for an HME pay a fee to cover the (1) costs of performing and adjudicating STAs, appeals, and waivers (Threat Assessment Fee); (2) the costs of collecting and transmitting fingerprints and applicant information (Information Collection Fee); and (3) the fee charged by the FBI to perform a criminal history records check (CHRC), called the FBI Fee.<sup>7</sup> States that choose to collect applicant information directly and submit it to TSA may charge applicants a State fee for that service, and TSA has no regulatory authority to control or determine that fee.

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<sup>4</sup> See TWIC and HME Final Rule at 3506.

<sup>5</sup> These applicants are not charged for the FBI Segment and pay a reduced fee for the Full Card Production/Security Threat Assessment Segment.

<sup>6</sup> See 69 FR 68720 (Nov. 24, 2004) (HME Program IFR) and the TWIC and HME Final Rule for more background information on the HME Program.

<sup>7</sup> 70 FR 2542 (Jan. 13, 2005) (HME Fees Final Rule).

These TWIC and HME fee amounts, which reimburse TSA for the costs of administering the programs, are specifically identified in current 49 CFR 1572.403 (state collection of HME fees), 1572.405 (TSA collection of HME fees), and 1572.501 (collection of TWIC fee). After receiving and evaluating public comments, TSA proposes to publish a final rule that removes specific fee amounts for these programs in 49 CFR part 1572, and instead publish any revisions to fee schedules in the Federal Register. These revisions to 49 CFR part 1572 will enable TSA to meet its statutory mandate to recover the costs of these programs, continue to fund these programs on an ongoing basis, provide notice to affected stakeholders of any revisions to the fees, and meet contractual obligations with vendors.

This proposed rule consists of an administrative revision. Therefore, there are no industry costs associated with the proposal. TSA costs for implementing the proposed rule would consist of administrative costs largely covered by current operations and therefore considered de minimis.

#### Legal Authority to Collect Fees

MTSA required DHS to issue regulations to prevent individuals from entering secure areas of vessels or MTSA-regulated port facilities unless such individuals undergo a successful STA and hold TWICs. In addition, nearly all credentialed merchant mariners are required to hold these transportation security cards.<sup>8</sup> MTSA also required DHS to

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<sup>8</sup> As noted in the Fall 2011 regulatory agenda, the Coast Guard is currently revising its merchant mariner credentialing regulations to implement changes made by section 809 of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 70105(b)(2), which reduces the population of mariners who are required to obtain and hold a valid Transportation Worker Identification Credential (TWIC).

establish a waiver and appeals process for persons found to be ineligible for the required transportation security card.<sup>9</sup>

Under 49 U.S.C. 5103a, a State is prohibited from issuing or renewing a commercial driver's license (CDL) unless the Secretary of Homeland Security has first determined that the driver does not pose a security threat warranting denial of the HME.<sup>10</sup> HME program regulations require States to choose between two fingerprint collection options: (1) the State collects and transmits the fingerprints and applicant information of drivers who apply to renew or obtain an HME; or (2) the State chooses to have a TSA agent to collect and transmit the fingerprints and applicant information of such drivers.<sup>11</sup> Under the regulations, States were required to notify TSA in writing of their choice by December 27, 2004, and are required to maintain that choice for at least three years.

Congress directed TSA to collect user fees to cover the costs of its vetting and credentialing programs.<sup>12</sup> TSA must collect fees to pay for conducting or obtaining a CHRC; reviewing pertinent law enforcement databases, and records of other governmental and international agencies; reviewing and adjudicating requests for waivers and appeals of TSA decisions; and any other costs related to conducting the STA or providing a credential.

The statute requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the STA or providing

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<sup>9</sup> See sec. 105 of MTSA (Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002)), codified at 46 U.S.C. 70105, as amended by the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (October 13, 2006).

<sup>10</sup> Pub. L. 107-56, 115 Stat. 272 (Oct. 25, 2001) as updated by Pub. L. 110-244, SAFETEA-LU Technical Corrections Act of 2008 (June 6, 2008), codified at 49 U.S.C. 5103a. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA.

<sup>11</sup> See 49 CFR 1572.13. For more background information on the HME program, see, HME Program IFR as amended by the TWIC and HME Final Rule.

<sup>12</sup> See 6 U.S.C. 469.

the credential. The funds generated by the fee do not have a limited period of time in which they must be used; as fee revenue and service costs do not always match perfectly for a given period, a program may need to carry over funding from one fiscal year to the next to ensure that sufficient funds are available to continue normal program operations. TSA will comply with the The Chief Financial Officers (CFO) Act of 1990<sup>13</sup> and Office of Management and Budget Circular A-25,<sup>14</sup> regularly reviewing the fee program to ensure that fees correctly recover, but do not exceed, the full cost of services and make appropriate adjustments to the fees.

Current Fees

The following table identifies current fees for obtaining a TWIC<sup>15</sup> or HME.<sup>16</sup>

**Table 1: Current TWIC and HME Fees**

	<b>TWIC</b> (49 CFR 1572.501)	<b>HME</b> <b>(collected by State)</b> (49 CFR 1572.403)	<b>HME (collected by TSA or its agent)</b> (49 CFR 1572.405)
Enrollment Segment or costs for TSA or its agent to enroll applicants	\$ 43.25	N/A	\$38.00
STA Segment or costs for TSA to conduct security threat assessment and produce cards	\$ 72.00	\$34.00	\$35.00
FBI Segment or costs for fingerprint identification records	Determined by FBI	Determined by FBI	Determined by FBI
Card Replacement	\$ 60.00	N/A	N/A

There are reduced fees for TWIC applicants if they have undergone a comparable threat assessment.<sup>17</sup> There are reduced fees for HME applicants if they have undergone a comparable threat assessment (TWIC STA) and the issuing State chooses to offer comparability to HME applicants.

<sup>13</sup> Pub. L. 101-576 (codified at 31 U.S.C. 501 *et seq.*)

<sup>14</sup> Available at <[http://www.whitehouse.gov/omb/circulars\\_a025](http://www.whitehouse.gov/omb/circulars_a025)>.

<sup>15</sup> See 49 CFR 1572.501(d).

<sup>16</sup> See 49 CFR 1572.405.

<sup>17</sup> See 49 CFR 1572.501(d).

## Standards and Guidelines Used to Calculate the Fees

TSA has a statutory obligation to recover its costs for the HME and TWIC STA programs through user fees. These fees reimburse TSA for the costs of administering the program. Pursuant to the general user fee statute (31 U.S.C. 9701) and OMB circular A-25, TSA establishes user fees after providing the public notice and an opportunity to comment on the amount of the fee and the methodology TSA used to develop the fee amount.

## Methodology Used to Calculate the Fees

The methodology and considerations supporting TWIC fee determinations are explained in detail in the preamble to the TWIC Final Rule.<sup>18</sup> The standard TWIC fee includes cost components associated with enrollment and credential issuance; threat assessment and adjudication including appeals and waivers; card production; TSA program and systems costs; and the FBI fee to conduct the CHRC.

The methodology and considerations supporting the HME fee determinations were explained in detail in the preamble to the HME Fees Final Rule.<sup>19</sup> The standard HME fee includes cost components associated with enrollment; threat assessment and adjudication including appeals and waivers; TSA program and systems costs; and the FBI fee to conduct the CHRC. States have the option to collect and transmit an applicant's biographic and biometric information directly to TSA, or the State may elect to use the

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<sup>18</sup>The preambles to the HME Fees Final Rule and TWIC and HME Final Rule included a discussion of the potential range of fees that would be charged for each Segment of the applicable program. The TWIC and HME Final Rule did not publish specific fees for each Segment of the TWIC program because the contract for enrollment and card production services was not finalized at that time. TSA explained in the preamble that when the contract was executed and final fee amounts determined, it would publish a notice in the Federal Register announcing them. The final fee amounts were published in March 2007. See 72 FR 13026 (March 20, 2007).

<sup>19</sup> Additional information can be found in the preamble to the HME Fees NPRM (69 FR 65332 (Nov. 10, 2004)).

TSA agent to collect and transmit applicant biographic and biometric data. For States that collect applicant data themselves, the enrollment component of the fee may vary by State, but other costs (threat assessment and adjudication costs, TSA program and system costs, FBI CHRC costs) will remain the same regardless of State.

In finalizing these methodologies, TSA considered comments from individual commercial drivers; labor organizations; trucking industry associations; State Departments of Motor Vehicles; associations representing the agricultural, chemical, explosives, and petroleum industries; and associations representing State governments.<sup>20</sup> TSA does not intend to change the methodologies for determining these fees.

#### Factors that Could Affect Fees

As explained in the methodology discussion for the TWIC and HME rules, there are certain factors that could cause changes in the fees, such as inflation. Fees could also be affected by cost changes in contractual services for enrollment, adjudication, credentialing and other factors. For example, as explained in the methodologies proposed for TWIC and HME fees,<sup>21</sup> TSA uses contract services to support the TWIC and HME STA programs, including enrollment services, adjudication support, credentialing, technology development, technology operations and maintenance, and customer service support. When the pertinent contracts for services are amended or renegotiated,<sup>22</sup> the

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<sup>20</sup> See discussion regarding comments received in the HME Fees Final Rule, at 2545 et seq. and the TWIC and HME Final Rule at 2552 et seq.

<sup>21</sup> For TWIC, see the TWIC Program NPRM, 71 FR 29396, at 29426 et seq. (May 22, 2006), as further clarified by the TWIC and HME Final Rule, at 3506 et seq. For HME, see the HME Fees NPRM, as further clarified by the HME Fees Final Rule.

<sup>22</sup> See, e.g., TSA published a request for proposal (RFP) in June 2011 related to TSA enrollment services to support TWIC, HME and other programs (Solicitation Number: HSTS-02-R-11TTC721). This RFP is available at

<[https://www.fbo.gov/index?s=opportunity&mode=form&id=baa296652eb065c4220b61156e07e289&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=baa296652eb065c4220b61156e07e289&tab=core&_cview=1)>.

fees may be affected. Cost variations, such as changes in the number of enrollments, could also affect fees.

In addition, pursuant to the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990), DHS/TSA is required to review fees no less than every two years (31 U.S.C. 3512). Upon review, if TSA finds that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (total fees do not cover the total costs to provide the services) TSA must adjust the fee.

#### Changes to Existing Rules and Communication of Fee Schedules

As previously discussed, TSA has a statutory requirement to sustain the HME and TWIC STA programs through user fees. Currently, TSA is at risk of having to suspend issuance of credentials to meet HME or TWIC program requirements or decreasing services until a rule change is completed to reflect any changes in fee amounts. To address this issue, TSA is proposing to revise existing regulations to ensure that TSA can continue to fund these programs on an ongoing basis, provide notice to affected stakeholders of any revisions to the fees, and meet contractual obligations with vendors.

TSA is proposing to amend 49 CFR 1572.403(a) (state collection of HME fees), 1572.405(a) (TSA collection of HME fees), and 1572.501(b) (collection of TWIC fees) to remove references to specific fee amounts, and instead publish any revisions to fee schedules in the Federal Register.

These amendments would make the provisions for HME and TWIC fees consistent with regulations regarding fees for STAs collected under 49 CFR part 1540, subpart C (related to civil aviation security). They would also be consistent with methods

for communicating changes for fees required by the FBI<sup>23</sup> and the Federal Emergency Management Agency.<sup>24</sup>

These proposed revisions would not affect FBI fees, as specified in 49 CFR 1572.403(a)(2) (state collection of HME fees), 1572.405(a)(3) (TSA collection of HME fees), and 1572.501(b)(3). The proposed revisions would also not affect the ability of a State to collect any other fees that it may impose on an individual who applies to obtain or renew an HME, as specified in current 49 CFR 1572.403(b)(3).

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA sec. 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that this proposed rule does not affect current information collection requirements associated with the affected regulatory provisions.

TSA has two collection requirements relevant to this rulemaking. For TWIC purposes (OMB 1652-0047), TSA collects information needed to process TWIC enrollment and conduct the STA. At the enrollment center, applicants verify their biographic information and provide identity documentation, biometric information, and proof of immigration status (if required). This information allows TSA to complete a comprehensive STA. If TSA determines that the applicant is qualified to receive a TWIC, TSA notifies the applicant that their TWIC is ready for activation. Once

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<sup>23</sup> See 76 FR 78950 (Dec. 20, 2011).

<sup>24</sup> See 74 FR 66138 (Dec. 14, 2009).

activated, this credential will be used for identification verification and access control. TSA also conducts a survey to capture worker overall satisfaction with the enrollment process; this optional survey is provided during the activation period. For purposes of the HME (OMB 1652-0027), the collection involves applicant submission of biometric and biographic information for TSA's STA in order to obtain the HME on a CDL issued by the States and the District of Columbia. Both of these collections are currently pending renewal.

## **Economic Impact Analyses**

### Regulatory Evaluation Summary

Changes to Federal regulations must undergo several types of economic analyses. First, Executive Orders (E.O.s) 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards and, where appropriate to use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects

of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

#### Executive Order 12866 Assessment

In conducting these analyses, TSA provides the following conclusions and summary information:

1. TSA has determined that this rulemaking is not a "significant regulatory action" as defined in E.O. 12866;
2. TSA has certified that this rulemaking would not have a significant impact on a substantial number of small entities;
3. TSA has determined that this rulemaking imposes no significant barriers to international trade as defined by the Trade Agreement Act of 1979; and
4. TSA has determined that this rulemaking does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector as defined by the Unfunded Mandates Reform Act (UMRA).

The basis for these conclusions is set forth below.

#### Costs

This proposed rule consists of an administrative revision. Therefore, there are no industry costs associated with the proposal. TSA costs for implementing the proposed rule would consist of administrative costs largely covered by current operations and therefore considered de minimis.

#### Benefits

By statute, TSA must sustain the HME and TWIC STA programs through user fees. The proposed revisions to existing regulations would increase TSA's flexibility to modify fees, as necessary, to ensure that STA, enrollment and credentialing fees reflect their associated costs, thus creating a more efficient process. This ability would facilitate the continual and ongoing funding of the TWIC and HME programs, allow TSA to timely meet contractual obligations with vendors, and still provide sufficient notice to affected stakeholders of any revisions to the fees.

Absent the ability to amend fees through notice rather than rulemaking, TSA is less likely to make timely changes to fees when associated costs change, such as contracts or vendor pricing, and when such changes are made, there is an increased likelihood that they would be more dramatic. Amending fees through notice would allow for more incremental changes and reduce the risk of TSA suspending issuance of credentials to meet HME or TWIC program requirements or decreasing services until a rule change is completed to reflect the new fee amount.

#### Regulatory Flexibility Act Assessment

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities,"<sup>25</sup> Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, small not-for-profit organizations, and small

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<sup>25</sup>See 5 U.S.C. 603(a).

governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The proposed rule is an administrative revision to 49 CFR 1572 Subpart E (“Fees for Security Threat Assessments for Hazmat Drivers”) and Subpart F (“Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)”) and does not impose any additional direct costs on the maritime or hazardous material transportation industries, including costs incurred by small entities. Therefore, TSA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities. However, TSA invites comments from members of the public who believe there would be a significant impact.

Small entities impacted by current HME and TWIC fee collection regulations, which this proposed rule is revising, include maritime industries associated with ports (i.e., vessels and facilities) regulated under the MTSA. Specifics on impacted entities are provided in the TWIC Implementation in the Maritime Sector Final Rule Regulatory Impact Assessment published December 21, 2006.<sup>26</sup> Using the North American Industry Classification System (NAICS) codes and information from the 2007 Economic Census,<sup>27</sup> TSA identified 11,395 covered entities of which 90 percent (10,206) are

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<sup>26</sup> See, e.g., Deep Sea Freight Transport (NAICS 483111), Deep Sea Passenger Transport (NAICS 483112), Coastal and Great Lakes Freight Transport (NAICS 483113), Coastal and Great Lakes Passenger Transport (NAICS 48314), Inland Water Freight Transport (NAICS 483211), Inland Water Passenger Transport (NAICS 483212), Scenic and Sightseeing Transportation, Water (NAICS 487210), Navigational Services to Shipping (NAICS 488330), Other Support Activities for Water Transportation (NAICS 488390), Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing (NAICS 532411), Sightseeing Water (NAICS 48799), Casinos (except Casino Hotels) (NAICS 713210), Other Gambling Industries (NAICS 713930), Marinas (NAICS 713930), Ports and Harbors (NAICS 488310), Marine Cargo Handling (NAICS 48832), Seafood Product Preparation and Packaging (NAICS 3117), Ship Building and Repair (NAICS 336611), Boat Building (NAICS 336612).

<sup>27</sup> U.S. Census Bureau, Business & Industry, 2007 Economic Census (available at <<http://www.census.gov/econ/>> (Subject Series: Establishment and Firm Size (national) Table 4. Revenue Size of Firms for the US) and (Summary Series: General Summary (national) Table 1. Industry Statistics for the US).

considered small based on Small Business Administration (SBA) standards. Truck drivers who transport hazardous materials required to obtain a HME as a supplement to their CDL are also impacted by the current HME and TWIC fee collection regulations.<sup>28</sup> Some transportation companies hauling hazardous materials (in other words, for -hire contractors transporting hazardous materials) may be impacted by the HME requirement. TSA assumes firms engaging in truck transportation of hazmat are generally found in the specialized freight trucking industry (NAICS code 4842). Economic Census 2007 data<sup>29</sup> indicates 39,023 entities operating under NAICS code 4842 of which 99.6 percent (38,868) would be considered small based on SBA size standards (revenues of \$25.5 million or less). Therefore, the current HME and TWIC fee collection regulations, which this proposed rule is revising, impacts a substantial number of small entities. However, as stated previously, this proposed rule is an administrative change and does not result in any additional direct costs on the maritime or hazmat industry, including costs incurred by small entities in those industries. As such, TSA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

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<sup>28</sup>See 49 CFR 1572.403 and 1573.405.

<sup>29</sup>U.S. Census Bureau, Business & Industry, 2007 Economic Census; Sector 48: Transportation and Warehousing: Subject Series- Estab & Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 200. Available at <[http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-ds\\_name=EC0748SSSZ4&-ib\\_type=NAICS2007&-NAICS2007=4842](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0748SSSZ4&-ib_type=NAICS2007&-NAICS2007=4842)>.

TSA has assessed the potential effect of this rulemaking and as TSA has determined that there are no associated industry costs, it does not impose significant barriers to international trade.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

#### **Executive Order 13132, Federalism**

TSA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

## **Environmental Analysis**

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

## **Energy Impact Analysis**

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

## **List of Subjects in 49 CFR Part 1572**

Appeals, Commercial Driver's License, Criminal history background checks, Explosives, Facilities, Hazardous materials transportation, Maritime security, Merchant mariners, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

## **The Proposed Amendments**

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend part 1572 of Chapter XII of Title 49, Code of Federal Regulations, as follows:

### **PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS**

1. The authority citation for part 1572 continues to read as follows:

**Authority:** 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

### **Subpart E—Fees for Security Threat Assessments for Hazmat Drivers**

2. In § 1572.403 revise paragraphs (a) through (a)(3) to read as follows:

**§ 1572.403 Procedures for collection by States.**

\* \* \* \* \*

(a) Imposition of fees. (1) An individual who applies to obtain or renew an HME, or the individuals' employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(2) TSA shall publish the Threat Assessment Fee described in this subpart for an individual who applies to obtain or renew and HME as a notice in the Federal Register. TSA reviews the amount of the fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

(3) The FBI Fee required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572 is determined by the FBI under Pub. L. 101-515. If the FBI amends this fee, the individual must remit the amended fee.

\* \* \* \* \*

3. In § 1572.405 revise paragraphs (a) (1) through (a)(4) to read as follows:

**§ 1572.405 Procedures for collection by TSA.**

\* \* \* \* \*

(a) Imposition of fees. (1) An individual who applies to obtain or renew an HME, or the individuals' employer, must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by TSA, when the individual submits the application required under 49 CFR part 1572.

(2) TSA shall publish the Information Collection Fee and Threat Assessment Fee described in this subpart for an individual who applies to obtain or renew and HME as a notice in the Federal Register. TSA reviews the amount of the fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

(3) The FBI Fee required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572 is determined by the FBI under under Pub. L. 101-515. If the FBI amends this fee, TSA or its agent, will collect the amended fee.

\* \* \* \* \*

**Subpart F—Fees for Security Threat Assessments for Transportation Worker  
Identification Credential (TWIC)**

3. Amend § 1572.501 by revising introductory paragraph (b) through (b)(3), (c)(1) through (c)(2), (d), and (g) to read as follows:

**§ 1572.501 Fee collection.**

\* \* \* \* \*

(b) Standard TWIC Fees. The fee to obtain or renew a TWIC, except as provided in paragraphs (c) and (d) of this section, includes the following segments:

(1) The Enrollment Segment Fee covers the costs for TSA or its agent to enroll applicants.

(2) The Full Card Production/Security Threat Assessment Segment Fee covers the costs for TSA or its agent to conduct a security threat assessment and produce the TWIC.

(3) The FBI Segment Fee covers the costs for the FBI to process fingerprint identification records, and is the amount collected by the FBI under Pub.L. 101-515. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) \* \* \*

(1) The Enrollment Segment Fee covers the costs for TSA or its agent to enroll applicants.

(2) The Reduced Card Production/Security Threat Assessment Segment covers the costs for TSA to conduct a portion of the security threat assessment and issue a TWIC.

(d) Card Replacement Fee. The Card Replacement Fee covers the costs for TSA to replace a TWIC when a TWIC holder reports that his/her TWIC has been lost, stolen, or damaged.

\* \* \* \* \*

(g) Imposition of fees. TSA routinely establishes and collects fees to conduct the security threat assessment and credentialing process. These fees apply to all entities requesting a security threat assessment and/or credential. The fees described in this section for an individual who applies to obtain, renew, or replace a TWIC under 49 CFR

part 1572, shall be published as a notice in the Federal Register. TSA reviews the amount of these fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

Issued in Arlington, Virginia, on June 5, 2012

John S. Pistole,  
Administrator.

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